THE HONOURABLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO. 2393 OF 2000

DATED: 28-11-2007

BETWEEN:

Yegu Rosaiah, S/o. Ankaiah, aged about 66 years,
R/o. Earst-while Kothuru village, Sidhout Taluk,
Cuddapah District and 134 others

… Petitioners

and

The Special Deputy Collector
(Land Acquisition),
Somasila Project, Unit 4, Rajampet.

… Respondent

THE HONOURABLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO. 2393 OF 2000

ORDER:

This writ petition is filed by the petitioners for a writ of Mandamus declaring the inaction of the respondent in re-determination of compensation under Sec.28(A) of the Land Acquisition Act, 1894(for short 'the Act') as illegal and arbitrary. The petitioners also sought for a direction to the respondent to re-determine the compensation in respect of their lands, fields etc. in reach No.3 of Kothuru Village, in terms of the compensation fixed by judgment dated 11-03-1992 of the court of the Subordinate Judge, Rajampet in L.A.O.P.No.2399/1988.

The facts which are not in dispute are that as per notification dated 12-01-1978 issued under Sec.4(1) of the Act all the lands of the petitioners' along with the lands belonging to other farmers of Kothuru village were acquired as they were being subjected to submersion under Somasila Project. Some of the owners of the lands, which were subjected to acquisition sought for reference under Sec.18 of the Act to

civil Court for enhancement of compensation fixed under Award No.10/80 dated 11-07-1980. The said reference was taken on file by the Subordinate Judge Court (for short "the Civil Court'), Rajampet and registered as L.A.O.P.No.2399/1988, on 11-03-1992. The said O.P. was disposed of by the civil Court where under enhancement of compensation was made. Up to this stage, there is no dispute about the facts.

The petitioners however claimed that none of them filed any application for reference under Sec.18 of the Act. They further averred that a copy of application for supply of order dated 11-03-1992 passed in L.A.O.P.No.2399/88, was filed on 09-04-1992 and a certified copy was made ready on 18-05-1992, that the petitioners' advocate sent the written applications on their behalf by registered parcel No.5881 dated 09-07-1992 along with covering letter dated 08-07-1992, duly enclosing the certified copy of the order and decree in L.A.O.P.No.2399/1988 wherein the respondents were requested to re-determine the compensation for their lands, trees, wells etc. on the basis of award dated 11-03-1992. It is further asserted that the respondent received the applications on 10-07-1992, i.e., within three months from the date of the award excluding the period for obtaining the certified copy of the order and decree. Since the respondent has not passed any orders, the petitioners filed the present writ petition.

Sri K. Gangachalam, Special Deputy Collector,(L.A.) Somasila Project, Unit IV, Rajampet, the respondent herein filed a counter affidavit. It is averred therein that as the writ petition is filed by 135 petitioners, it is difficult to verify each and every person since award was passed on 11-07-1980 and the civil Court rendered judgment on 11-03-1992, that the petitioners without giving full facts submitted joint application and hence it is not possible for scrutiny of their cases without proper details at this juncture that on perusal of records, he came to know that petitioners No.57, 104, 105, 107, 108, 112 and 123

have already availed remedy under Sec.18 and therefore, they cannot make applications under Sec.28-A. It is stated by the respondent that the applications under Sec.28-A were filed on 17-07-1992 seeking to re-determine the compensation in the light of the orders passed in O.P.No.2399/88. A plea is however raised by the respondent that the writ petition filed nearly eight years after the filing of the applications suffers from laches and therefore, the same is liable to be dismissed on that ground. In Paragraph-3 of the counter affidavit it is stated that as the award was passed in the year 1980, the office of the respondent could trace out the old records with regard to some persons in the writ petition and that petitioner Nos. 57, 104, 105, 107, 108, 112 and 123 have already availed the remedy under Sec.18 of the Act in O.P.No.2399/1988. It is also stated in the counter affidavit that taking advantage of the non-availability of the record, the petitioners have filed the present writ petition after long lapse of nearly eight years to make wrongful gain.

Petitioner No.56 filed a reply affidavit in which it is denied that petitioners No.57, 104, 105, 108, 112 and 123 had already availed the remedy under Sec.18 of the Act and annexure filed along with the reply affidavit contains the details of the said petitioners in order to show that they have not approached the civil Court under Sec.18. He also denied the allegation that the writ petition suffers from laches and referred in that context to the notices in reference No.2311 issued under Form 7-A to appear before the respondent on 17-07-1995 and accordingly the petitioners appeared before the respondent on that day. It is further averred that the petitioners were again issued notices by the respondent on 20-08-1999 to appear on 29-08-1999 and accordingly they again appeared before him and he recorded their statements and within six months there from they filed the present writ petition.

Sri K. Somakonda Reddy, learned counsel for the petitioners submitted that the petitioners are conferred with the statutory right to

seek re-determination of compensation in cases where competent civil Court enhanced the compensation in respect of lands belonging to other persons covered by the same notification. He submitted that the material on record produced by the petitioners amply proves that they have complied with the requirements of the provisions of Sec.28-A by approaching the respondent within the time stipulated by the said provision and the respondent has been unresponsive to their applications. He also submitted that the claim that the writ petition suffers from laches is wholly meritless for the reason that on as many as two occasions, the respondent gave notices to the petitioners, i.e. on 17-07-1995 and 20-08-1999 where under the petitioners were required to be present and except recording the statements of the petitioners the respondent has not passed any orders under Sec.28-A. He therefore submitted that the petitioners were always diligent in prosecuting their claim and it is on account of the lethargy and indifference on the part of the respondent that they are denied their legitimate claim for payment of enhanced compensation.

The learned Asst. Government Pleader for Land Acquisition reiterated the pleadings in the counter affidavit. He stated that since the acquisition relates to the year 1980, the records are not available and therefore taking advantage of non-availability of records, the petitioners made their claims in order to make unjust enrichment. The learned Asst. Government Pleader also submitted that the ACB officials seized the records in connection with certain allegations relating to payment of compensation concerning acquisitions for Somasila Project and therefore, it is not possible to the respondent to pass any orders under Sec.28-A of the Act. He also submitted that there was more than seven years delay in the petitioners approaching this Court by way of the present writ petition and therefore, the writ petition is liable to be dismissed on the ground of laches.

I have carefully considered the respective submissions of the learned counsel.

It is not in dispute that the civil Court by its award dated 11-03-1992 enhanced the compensation in respect of the lands covered by the notification under which certain lands belonging to the petitioners were also acquired. One of the contentions raised in the counter affidavit is that out of 135 petitioners, seven petitioners have already availed the remedy under Sec.18 of the Act. In the reply affidavit, the petitioners made a categorical denial of the said petitioners approaching the civil court for enhancement under Sec.18. The respondent has not filed a copy of the award of the civil Court or the alleged applications of the said petitioners seeking reference under Sec.18 of the Act. In the absence of any such material having been produced before this Court, this contention of the respondent is liable to be rejected.

As regards the claim of the petitioners that they have approached the respondent within the stipulated time of three months, they filed a copy of letter dated 08-07-1992 sent by their advocate Sri G. Ramalinga Reddy, Cuddapah to the respondent in which it is mentioned that applications under Sec.28-A of the Land Acquisition Act are enclosed along with certified copy of the order and decree dated 11-03-1992 passed in L.A.O.P.No.2399/1988. The petitioners also filed a copy of letter dated 12-08-1992 sent by their advocate Sri G.Ramalinga Reddy to the Post Master, Cuddapah, wherein it was requested to inform whether the registered parcels dated 09-07-1992 sent to the respondent were received by the respondent or not. In reply to the said letter, the Superintendent of post offices, Cuddapah, by his letter dated 28-09-1992 mentioned that all the three registered parcels were delivered to the addressee on 10-07-1992 and he also enclosed attested copies of the receipts of the addressee. The petitioners categorically mentioned in the affidavit that the applications of the petitioners were sent through parcel No. 5881 dated 09-07-1992 and the attested copy of the receipt shows that the registered parcel mentioned at item No.3 was received under the signature of the

respondent. While the respondent has not made any denial of these specific averments in his counter affidavit, he has taken the stand that the applications were received on 17-07-1992. However, the respondent has not taken the plea that the receipt of applications on the said date is beyond the time limit stipulated under Sec.28-A and it is also not the case of the respondent that since these applications were beyond the time, they were rejected.

As already noted in the counter affidavit, a vague statement is made that taking advantage of the non-availability of record, the petitioners filed the present writ petition. The respondent failed to explain as to what happened to the record and who is responsible for its alleged disappearance. This plea cannot be given any credence since in Paragraph-2 of the same counter, the respondent mentioned "on perusal of records, the following petitions 57, 104, 105, 107, 108, 112 and 123 have already availed remedy under Sec.18 of the Act". The counter is thus replete with contradictions. At any rate, if the record is not available, the petitioners are not to blame and there is a statutory obligation on the respondent to deal with the applications filed by the petitioners, receipt of which is admitted by the respondent. One of the contentions, viz., joint applications were filed, in my view is wholly without any basis. The respondent has not produced any record whatsoever and if in his opinion, the joint applications were not maintainable, there was no reason why he has not passed an order rejecting the said applications. It is not his case that these applications were returned to the petitioners as not maintainable.

I cannot accept the claim of the learned Asst. Government Pleader for Land Acquisition that the record has been seized by ACB officials and therefore, he is disabled from disposing of the applications of the petitioners. In the counter affidavit of the respondent, no such averment is made and even if the records were seized subsequent to the date of the filing of the said counter affidavit, the respondent could have filed an additional counter affidavit by

bringing the said alleged fact to the notice of this court, but no such effort is made. Even if the record was seized by the ACB officials, it is the bounden duty of the respondent to approach them and seek supply of copies of the record to enable him to discharge his statutory obligation cast on him under Sec.28-A of the Act. The respondent cannot wash off his hands by coming out with a vague plea through his counsel that records were seized and therefore, he is helpless. Such a plea can never be countenanced in a system governed by rule of law.

As held by the Supreme Court in ***UNION OF INDIA AND ANOTHER v. PRADEEP KUMARI AND OTHERS***[1], Section 28-A is a beneficial provision, which is intended to help poor people to seek enhanced compensation on the basis of the civil court's award. Such a benevolent provision cannot be defeated by the indifference of bureaucratic apparatus.

As regards the plea of laches, the same can be referred only to be rejected. In support of the contention of the petitioners that the respondent had been issuing notices requiring the petitioners to appear before him, the petitioners filed a set of 109 notices along with an affidavit and a petition, which was allowed by this Court on 07-11-2007 and a perusal of these notices shows that the petitioners were called upon by the respondent to appear before him on 29-08-1999 at Rajampet and the notices also contain the name of the village, the description of the properties and the awards passed by the Land Acquisition Officer and Civil Court etc. The present writ petition is filed on 09-02-2000, i.e. within six months of the appearance of the petitioners before the respondent. Therefore, the plea of laches is specious to say the least. Far from the writ petition suffering from laches, the respondent is guilty of indolent attitude. This court is compelled to observe that he has not shown the sensitivity, which is required to be shown in a case of this nature, where the farmers have been making valiant efforts to get the benefit, which is conferred on them by the statute.

For the afore mentioned reasons, the writ petition is allowed. The respondent is directed to consider the applications of the petitioners and pass appropriate orders for re-determination of the compensation in respect of the lands of the petitioners in terms of the award dated 11-03-1992 passed in L.A.O.P.No.2399 of 1988 on the file of the Subordinate Judge, Rajampet within a period of three(3) months from today. No order as to costs.

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C.V. NAGARJUNA REDDY, J.

Dt: 28-11-2007
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[1] AIR 1995 SUPREME COURT 2259